UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---X
WILLIAM K. DUFFY, et al.,

                                                          ORDER
                                                  07-CV-217 (DRH) (ARL)

                     Plaintiffs,

        -against-

EAST PORT EXCAVATION & UTILITIES
CONTRACTORS, INC., et al.,

                     Defendants.
---X
HURLEY, Senior District Judge:

        On January 15, 2010, Magistrate Judge Arlene R. Lindsay issued a Report and

Recommendation (the "Report") that the Court strike the Answers of defendants East Port

Excavation & Utilities Contractors, Inc. and East Port Construction, Inc. (the "corporate

defendants") due to their failure to retain new counsel by December 18, 2009, the deadline set by

Judge Lindsay after their prior counsel was granted leave to withdraw. On January 25, 2010, new

counsel filed a Notice of Appearance on behalf of the corporate defendants and filed a timely

objection to the Report. Counsel explains that he was first contacted by the corporate defendants

on January 7, 2010. The next day he contacted prior counsel to obtain the case file and, on January

15, 2010, arranged for the payment of $3500.00 for release thereof.

        Federal Rule of Civil Procedure 72(b) provides that when a magistrate judge issues

a report and recommendation on a matter "dispositive of a claim or defense of a party," the district

court judge shall make a de novo determination of any portion of the magistrate judge's disposition

to which specific written objection has been made. Fed. R. of Civ. P. 72(b). Because the corporate

defendants object to the January 15, 2010 Report in its entirety, the Court applies de novo review.

At the time the Report was issued, the corporate defendants had failed to retain new counsel and Judge Lindsay therefore properly recommended that their Answers be stricken. Given the changed circumstances, however, and the general judicial preference to resolve cases on the merits, the Court grants the corporate defendants' objections and declines to adopt the Report.

SO ORDERED.

Dated: Central Islip, N.Y.
February 19, 2010

/s/
Denis R. Hurley,
United States District Judge